

Building Official

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**Building Code Appeals Board  
Docket No. 05-435**

Abercrombie & Fitch,	)
Appellant	)
v.	)
City of Boston,	)
Appellee	)

**BOARD'S RULING ON APPEAL**

**Procedural History**

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant asks the Board to grant a variance from 780 CMR §713.3 of the Massachusetts State Building Code ("Code") with respect to renovation of retail shopping spaces at an Abercrombie & Fitch store located at 1 Faneuil Hall Square, Boston, MA ("Project").

By decision dated June 1, 2007, the Inspectional Services Department of the City of Boston ("Appellee"), denied an application for interior renovations and reconfiguration for the Project because the renovations/reconfiguration would not comply with 780 CMR §3404.13; 1014.11; and 713.3.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR §1.02 et. seq.; and 780 CMR §122.3.4, the Board convened a public hearing on July 5, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Kevin Hastings, of R. W. Sullivan Engineering, and Mitchell Gruesen appeared on behalf of Appellant.

**Reasons for Variance**

The Project involves, among other things, an interior stairway, for access among the basement, first, second, and third floor levels of a retail store, where the stairway would be open on the first, second, and third floor levels. Section 3404.13 of 780 CMR provides:

Open stairways are prohibited except in one- and two-family dwellings or unless otherwise permitted by 780 CMR 10. There shall be no minimum fire resistance rating required for an existing enclosure of a stairway. Partitions or other new construction which is added in order to fully and solidly enclose a stairway shall provide a minimum fire resistance rating of one hour. All doors in the enclosure shall be self-closing and tight-fitting with approved hardware. All doors in those portions of the stairway which are fire resistance rated shall comply to the applicable provisions of 780 CMR 9.

Further, 780 CMR 1014.11 states, in pertinent part, "Stairways that are not a required means of egress element are not required to be enclosed where such stairways comply with 780 CMR 713.3." Under §713.3, "All floor openings connecting two or more stories shall be protected by a shaft enclosure that complies with 780 CMR 710.0," unless it meets one of the exceptions (which the design did not, according to Appellee).

Appellant argued that Exception 8 to 780 CMR 713.3 should be applied in these circumstances. Exception 8 states, "A shaft enclosure for an escalator floor opening is not required where a shaft enclosure is not required for floor openings in accordance with 780 CMR 713.3 or where the building is equipped throughout with an automatic sprinkler system in accordance with 780 CMR 906.2.1 and the escalator opening is protected in accordance with 780 CMR 713.4.3.4 or 713.4.3.5." Appellant maintained that "the proposed non-combustible fixed stair does not present an additional fire or life safety hazard when compared to an escalator and should be allowed the same protection options for the floor opening."

In addition, Appellant noted that the same issue has been addressed in the 2003 International Building Code (Section 707.2, Exception 2), where fixed stairs are included the escalator floor opening protection option/exception.

### Decision

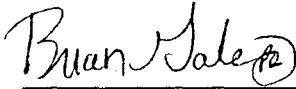
The Chair entertained a motion to grant the variance to §713.3 of the Code to allow Exception 8 in §713.3 to be applied in these circumstances, considering Appellant's arguments and the fact that Appellant's proposal addresses Appellee's concerns. ("Motion"). Following testimony, and based upon relevant information provided, Board members voted to allow the Motion, as described on the record. The Board voted as indicated below.

X..... **Granted**                      □..... **Denied**                      □..... **Rendered Interpretation** □

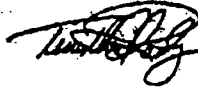
\_\_\_..... **Granted with conditions**                      □..... **Dismissed**

The vote was:

X..... **Unanimous**                      ..... □ **Majority**



Brian Gale



Timothy Rodrique



Robert Anderson

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: January 15, 2008

  
Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$10.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

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